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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 607....

ATLANTIC MARITIME COMPANY and S. LIVANOS & CO., INC., owners, operators and agents of the steamship "ATLANTIC AIR",

Petitioners,

against

A. BRADLEY RANKIN, Administrator of the Estate of LINDEVILLE TAYLOR, Deceased,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO APPLICATION FOR WRIT OF CERTIORARI

SILAS BLAKE AXTELL,
ARNOLD W. KNAUTH,
Counsel for Respondent.

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The Question

The issue in this case is whether a business concern—in this case Livanos & Co., who are Greek—may set up a business headquarters in New York and run a ship-operating enterprise—in this case eleven Liberty ships, all bought on mortgage from the U. S. Government—centering the business in New York, hiring the crews in U. S. ports out of the American labor market—in this case, Norfolk, Virginia—with Ship's Articles in the English language for round voyages always returning to U. S. ports, and pay-

ing the crews in wages expressed in Dollars, just like any American ship-operating enterprise, and yet be judicially suffered to pretend, by the device of incorporating the Greek personality under the laws of Panama, and registering the ships in Panama, that it is a stranger within our legal gates, offering these transparent legal devices as though they were solid barriers against the application of the Jones Act, 46 U. S. Code 688. The Court of Appeals refused to be deceived.

The petition (on p. 2) phrases the question in four different ways, so arranged as to suggest that this petitioner is a genuine foreigner, alien to our business world, whose contacts with the United States are occasional and remote, and whose relations with its seamen-employees have nothing to do with the United States, its labor laws and policies, and the life of its ports and trade. We urge on the contrary that this case does not represent a single instance, but is part of a great stream, having many and vital impacts upon the United States.

POINT I

The petitioner's cases do not support the allegation that the decision below reveals a situation which requires action by this Court.

The petitioner puts forward eight cases as allegedly revealing a situation of disharmony which this court should pass upon. On examination, only two of those cases are of interest, and only one—the *Sonnesen* case—could be of some real concern. This Court has already and recently denied certiorari in the *Sonnesen* case—in 1949 at 337 U. S. 919*—and we think that denial was proper. We do not think that it merits reconsideration by this Court, and feel confident that the Court will agree.

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* A motion to enlarge the time for application for a rehearing was denied, 337 U. S. 961.

The petitioner says (p. 9 of the petition, last full paragraph) that "This is the first case" on the particular point. We cite, in our Point II, cases dealing with the point over the last thirty years. The point is an old one. It is not novel. It is not in disharmony with a long line of federal cases at all levels. The divergence of the New York State courts is a local matter, of local concern.

Petitioner relies chiefly on

> *Sonnesen* v. *Panama Transport Co.* (1949), 298 N. Y. 262, 82 N. E. 2d 569, certiorari denied, 337 U. S. 919.

It mentions that case three times, with heavy emphasis. Unless we are impressed by that State Court case, the rest of the petition is of no particular federal interest.

First we note that counsel for the employer in the *Sonnesen* case are also counsel for the employer in this *Taylor* case. They urge that the federal and admiralty court should follow a pattern set by a single and common-law State.

Next we note the astonishing fact that neither counsel in the *Sonnesen* case briefed or appealed on the question of jurisdiction as to alien seamen in alien ships. The arguments are well summarized in the State Reporter, 298 N. Y. at 263-265. An inspection of the actual briefs shows that the Reporter's summaries are full and fair. So we discover that the New York State Court of Appeals decided the *Sonnesen* case on a point not briefed. In particular the employer, Panama Transport Co., a Panama company operating its ships under the Panama flag, did not challenge the jurisdiction of the State Court nor question the application of the Jones-FELA Act. It made only these four points: I. The Appellate Division had power to review the question and correctly dismissed the complaint for failure to prove a cause of action "under

any law"; II. The Appellate Division had power to set aside the verdict as against the weight of evidence; III. Plaintiff had failed to prove neglect in medical care; IV. Plaintiff had not proved any right to future maintenance.

Now this Panama Transport Co. is well known to be an affiliate of the Standard Oil Co. of New Jersey. It was first formed to enable Standard Oil to operate tankers to England and France in open circumvention of our Neutrality Law in 1939 and 1940. The Panama flag was not affected by the U. S. Neutrality Law. Some years before, the case of

> *Gerradin* v. *United Fruit Co.* (E. D. N. Y., 1931), 51 F. 2d 417; 1931 A. M. C. 1425; affirmed (C. C. A. 2d, 1932), 60 F. 2d 927; 1933 A. M. C. 81, certiorari denied, 287 U. S. 642,

had established that Americans who operated their boats under the flag of Honduras would have to apply the Jones-FELA Act to their relations with their seamen. The Standard Oil Co. did not propose to stand before the world as seeking to evade our seamen's laws when they put their tankers under the flag of Panama; they were merely getting around the Neutrality Act. They were not trying to upset their general labor relations applicable to their great fleet of tankers. In fact, a search of the reported cases concerning the Panama Transport Co. as a litigant does not reveal any instance where that company—through the same counsel who present the petition for the Atlantic Maritime Co. here—urged the idea that the Jones Act does not apply to its Panama-flag seamen. It has litigated Jones Act cases without raising that point. See, for instance,

> *Anderson* v. *Panama Transp. Co.* (S. D. N. Y., 1942), 1942 A. M. C. 43 and 744 (neither elsewhere reported).

Of course the Jones Act applies to Panama Transport ships; the Company and its seamen would not have it otherwise. So we find the curious fact that the New York Court seized upon the point of jurisdiction and applicability to toss out the case, although neither party raised these questions, and it was an undesirable disturbance of the employer company's policy. In effect the *Sonneson* case merely says that the Courts of New York State will not lend themselves to effectuating the Standard Oil Company's sound labor relations policy in dealing with its sick and injured seamen, under the federal Jones-FELA Act. Fortunately the federal courts are equally open in FELA cases, and in that field do not have to pay regard to the narrow and restrictive views of the State court. It may be unwise and unfortunate for New York to close its state courts to these cases; but that is a matter of state policy which this Court may regret but which it need not necessarily feel moved to change. After all, from the State point of view, Sonnesen was not a New Yorker, and Standard Oil is not a New Yorker, nor is Panama Transport Co. New York may if it wishes reject the Jones Act right which the federal statute has offered to it, or limit it. That is all there is to the *Sonnesen* case.

The *Sonnesen* case merely means that hereafter seamen will be careful to resort to the federal courts and to turn away from those state courts which may feel as New York does. The Jones Act gives the seamen a non-removable option as between the state and the federal court, it will be recollected.

The hostility of the New York State courts to the idea of applying the Jones Act to events on a foreign ship is not new; they denied their workmen the Jones Act right in 1928 and 1929 in

Resigno v. *Jarka* (1928), 248 N. Y. 225, 1928 A. M. C. 1101 (no application for certiorari),

where the longshoreman was killed on board a German ship, and in

> *Uravic* v. *Jarka* (1929), 252 N. Y. 530, wherein certiorari was applied for and granted, the decision being squarely reversed (1931) 282 U. S. 234, 1931 A. M. C. 239, opinion by Justice Holmes for the unanimous court;

in the *Uravic* case the longshoreman was killed on board a different German ship.

Now very curiously the Sonnesen opinion cites the *Resigno* case to support its denial of a remedy to the seaman in the foreign ship, without the least remark that the Resigno doctrine was swept away three years later by the *Uravic* case in this Court. See 298 N. Y. at 267, middle.

Thus the *Sonnesen* case appears as a State situation wherein, either by oversight or perhaps by dogged adherence to a view differing from the view of the United States Supreme Court, the State policy is set against giving relief to these seamen under this federal law. But that is a matter of State discretion. It is not a matter of particular interest to this Court.

And so this Court denied certiorari in the *Sonnesen* case. How the state courts decide their own limits of interest in these cases is a matter of indifference to the federal authority.

The only other case on which the petition places any heavy emphasis is

> The *Paula* (E. D. N. Y., 1937), 17 F. Supp. 555, 1937 A. M. C. 63, affirmed (C. C. A., 2d 1937), 91 F. 2d 1001, 1937 A. M. C. 988 certiorari denied, *Sub nom. Peters* v. *Lauritzen*, 302 U. S. 750.

The petition refers to this case twice. The Paula decision troubled the court which rendered it; upon the re-argument of the *Gambera* case, discussed hereinafter, Judge Learned Hand went to some pains to bolster it, and frankly admitted that the original opinion had not stated the facts quite accurately. See 1943 A. M. C. 47 (not elsewhere reported).

The Paula concerned a Danish ship which signed a German, one Peters, on her Articles at a port in Chile; Peters was thereafter hurt while the Paula was discharging cargo at Jacksonville. He claimed the Jones Act remedy, and the court denied it. Many details of fact are missing. Was the Paula bound for Denmark? It seems that she had been making round voyages in the ore-carrying trade between Chile and Jacksonville and Baltimore. Where did the Paula sign on her crew? Did they sign in Denmark for three years? Or in Baltimore, voyage by voyage? Perhaps the Paula was no more genuinely Danish than the Atlantic Air in this case was Panamanian The case is also unsatisfactory in other ways. Peters, after two months in hospital, found the Paula in Brooklyn, and filed a libel both *in rem* and *in personam* with writ of admiralty attachment, the vessel owner being absent altogether from Brooklyn. But the Jones Act is quite explicit in saying (in the last sentence) that the suit may be brought where the employer resides or has his principal place of business. The Jones Act aspect of the Paula could have been suitably disposed of by saying that the employer resided in Denmark and had no principal place of business at all in the United States. But in the meanwhile other cases had softened the last sentence so that it was construed as applying merely to venue. In any event, the court, speaking through Judge Swan, wrote:

> "That a suit in admiralty between aliens may be entertained or dismissed in the exercise of sound judicial discretion is clear beyond dispute • • • The only

question is whether discretion was abused in this particular case."

He then held that the U. S.-Danish treaty clause giving the Danish Consul exclusive jurisdiction over "controversies" did not apply, because a personal injury is not a controversy. Next he considered the four reasons advanced by Peters' attorney for taking jurisdiction: (1) the cause arose in an American port; (2) the witnesses were here and not in Denmark; (3) he hoped for a larger recovery here than the Danish compensation law would afford; (4) he had incurred debts in the United States during his two months in the hospital and while convalescing. The opinion continued:

> "No one, nor all of these circumstances would justify us in finding that the court abused its discretion. * * * the bare circumstance of where the cause of action arose has not been treated as determinative of the power of the court to exercise discretion * * * The libellant claims not only under the maritime law but also under * * * the Jones Act. He asks us to rule that this applies to an alien seaman on a foreign ship who signed on in a foreign port, if he sustains injury in a port of the United States through the negligence of a fellow seaman. This question was expressly left open in Plamals v. The Pinar Del Rio (1928), 277 U. S. 151, at 155, 1928 A. M. C. 932. Precise authority on it is meagre."

That was in 1937. He then cited two district court cases which had denied the Jones Act remedy to alien seamen where the crews were signed on in distant foreign ports—

in Norway: *The Seirstad* (E. D. N. Y.), 1928 A. M. C. 1241, 27 F. 2d 982;

in India: *The Magdapur* (S. D. N. Y.), 3 F. Supp. 971, 1933 A. M. C. 831.

And he failed to notice Judge Learned Hand's strong opinion in favor of applying the Jones Act to alien seamen in alien ships in

> *Stewart* v. *Pacific S. N. Co., Ltd.* (S. D. N. Y., 1924), 3 F. 2d 329, 1924 A. M. C. 1272;

and Judge Campbell's rather regretful language in the Seirstad, where he said that he too had given a remedy to an alien seaman in

> *The Navarino* (E. D. N. Y.), 7 F. 2d 743, 1925 A. M. C. 1062,

and felt in doubt because this Court had left the question open in

> *Plamals* v. *The Pinar Del Rio, supra.*

Continuing, Judge Swan recited that the benefit of the Jones Act had been extended to American stevedores in foreign ships, to American seamen injured in foreign ships in American ports, to a stevedore of "unproven" nationality in a French ship at the Panama Canal, to an American seaman in an American-owned vessel of foreign registry, and to an alien seaman injured aboard a yacht of foreign registry owned 50 per cent by an American. It is an impressive list showing the liberal construction of this remedial statute, intended for all seamen who trade to our ports.

Coming finally to Peters' case against the Paula, Judge Swan continued:

> "Whether an American seaman on a foreign ship, who had signed on in a foreign port, could claim under the Jones Act, is not entirely clear. In the Uravic opinion, Justice Holmes remarked (282 U. S. at p. 241, 1931 A. M. C. at 243):

> 'If it should appear that, by valid contract or special circumstances seamen in a foreign ship should *not* be protected by the statute, it will be time enough to consider the exception when it is presented.' " (Italics supplied.)

"It is even less clear",

then continued Judge Swan,

> "that a foreign seaman who had signed on *at a foreign port* should have the benefit of the Act." (Italics supplied.)

It is respectfully submitted that the learned court overlooked Justice Holmes' use of the word *not*. Holmes broadly implied that the Jones Act does apply to all seamen who come here, unless it should appear that "by valid contract or special circumstances" it should not protect them. We do not find any anti-Jones Act clause in the contract at bar; nor any special circumstances.

The Paula decision awakened much disturbed controversy; and when Judge Learned Hand wrote the Gambera opinion in 1942 without referring to The Paula, counsel raised the matter upon re-argument:

> *Gambera* v. *Bergoty* (C. C. A. 2d 1942), 1943 A. M. C. 47 (re-argument not elsewhere reported).

Whereupon he wrote:

> "It is true that we did not state the facts in The Paula quite accurately; the libellant in that case signed on in Chile; the ship was Danish; the voyage was from a Chilean port to Brooklyn. None of those facts could make the least difference, however, unless it were that the voyage ended in this country; and that too is immaterial since it does not concern those facts which we hold to bring the libellant at bar (Gambera) within the protected class."

Thus he adhered to the opinion that the Italian, Gambera, was within the class "protected" by the Jones Act. And it whittles down the The Paula doctrine, if indeed it does not quite take the whole sting out of it.

The petitioner's other cases are of small moment.

> *The Hanna Nielsen* (E. D. N. Y. 1920), 267 Fed. 729 (C. C. A. 2d 1921), 273 Fed. 171, certiorari denied, 257 U. S. 652,

antedated the Jones Act. The accident happened on an August-September voyage in 1919; the Jones Act was enacted on June 5th, 1920.

> *Hogan* v. *Hamburg-American Line,* 152 N. Y. Misc. 405, 272 N. Y. S. 690, certiorari denied, 295 U. S. 749,

concerned a seaman who joined a German transatlantic liner at New York and was injured at sea on the voyage to Germany. It was familiar knowledge that these ships signed on crews in Germany, with German Articles, paying wages in marks, and the only issue was whether a single man signing on in New York should have a different law from the others on that account. It was plain that Hogan, after injury, had soon arrived in the German port where the seaman's remedies of the flag were available; and that he elected to return to New York to try for the U. S. remedy. His was not the case of a man on the foreign-flag ship which never sees the ports of her supposed flag. The denial of certiorari to Hogan merely means that the federal court did not feel called on to interfere with the policy of the state court; it was like the denial in the *Sonnesen* case.

> *O'Neil* v. *Cunard* (C. C. A. 2d, 1947), 180 F. 2d 446, 1947 A. M. C. 505, certiorari denied, 332 U. S. 773,

is a somewhat harder case. O'Neil's family lived in New York; he took employment in Liverpool on a ship running to Canada, and suffered his fatal hurt in mid-ocean. The resulting social problem was the support of the family in New York, and the employer Cunard undoubtedly had a very large head office establishment at 25 Broadway. So it was arguable that the employer should give a remedy in New York, and under American law. However, it was evident that other elements making for U. S. jurisdiction were not present. The court decided that the New York relief problem should not be met by the British employer under our Jones Act.

> *Clark* v. *Montezuma* (N. Y. App. Div., 1926), 217 App. Div. 172, 216 N. Y. S. 295, 1926 A. M. C. 954,

suffered from the same difficulty that eventually caused the overthrow of *Resigno* v. *Jarka* and *Uravic* v. *Jarka*, which this Court set right in 1931 (See page 16 of this brief). An American engine-room seaman there accepted work from the Mate of a British ship which was laid up repairing in New York Harbor. There were no Articles. Clark was just a repairman who worked on the ship in port and happened to be employed by the ship instead of by an independent local contractor; he was injured by a negligent fellow servant. The trial court and jury awarded him $1,500 under the Jones Act; the Appellate Division reversed on the theory—which this court declared fallacious five years later—that a local American who works on board a foreign-flag ship in New York Harbor enters into a foreign country where the Jones Act and other American laws do not apply. The case is no longer a valid authority; this court overthrew its doctrine twenty years ago in the Resigno opinion.

This completes the survey of the petitioner's Jones Act cases. The list is short and, it is submitted, not impressive; it does not indicate that there is a problem of disharmony to which this court should devote attention.

POINT II

Numerous cases have applied the Jones Act to alien seamen and foreign ship owners and employers of seamen in many situations for over 27 years.

We now turn to the positive side of the respondent's case. Having shown that the petitioner's cases do not support its argument, we show that the court below decided the respondent's case correctly.

The review of cases begins on June 5, 1920, when the Jones Act was enacted. In 1924 Judge Learned Hand applied the Act to a British ship operator whose services included a route between U. S. Atlantic ports and the west coast of South America. The British line had a principal office in New York. The British ship operator challenged the applicability of the Jones Act to a foreign ship. Judge Hand wrote, in

> *Stewart* v. *Pacific Steam Navigation Co., Ltd.* (S. D. N. Y., 1924), 3 F. 2d 329, 1924 A. M. C. 1272.*
>
> "Only one point is raised on this motion to set aside the service of the summons* and that is that under * * * the Jones Act no action can be brought against a foreign corporation. * * * The general bestowal of jurisdiction is found in the 'right' sentence, the long one; it lays down what the right shall be and against whom it shall exist. * * * This language is general; there is no indication of any purpose to limit it to United States corporations.
>
> "And it would be highly unreasonable to impute any such purpose to Congress, for the result would

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* By oversight, the case was reported as an admiralty case; it was at law, as is indicated by the fact that it was initiated by the service of a summons.

be not only to deprive American seamen of the protection which the Act was meant to give them, when serving in foreign ships, but to give such ships advantage as against American ships. We all know the purpose of Congress is directly the opposite."

And to the argument that a foreign shipowner's principal office would be in some other country, he merely remarked:

"The principal office of a foreign corporation will normally mean the principal place where it does its business in the United States."

Of course in the case at bar, the Atlantic Maritime Co. and Livanos & Co. have their real head offices in New York.

Heredia v. *Davies* (C. C. A. 4th, 1926), 12 F. 2d 500, 1926 A. M. C. 703, affirming (E. D. Va.), 7 F. 2d 741, 1925 A. M. C. 604;

concerned a Peruvian ship which came to Norfolk. At that place, a Peruvian crew member tripped on a defective step and broke his leg; he was put ashore in an American hospital. Judge Groner wrote that jurisdiction ought to be exercised "where the relation of the seaman to the respondent has been severed and where the injury is alleged to have been sustained in an American port, for which a remedy is given by American law, but which is without remedy by Peruvian law." He allowed $400, and the shipowner appealed. The appellate court increased the award to $1,000 and Judge Parker wrote:

"As the injury was received within the waters of the United States, the learned district judge properly held that the rights of the parties were to be determined by the law of this country, the lex loci delicti."

Thus he differed squarely with Judge Swan's ruling in The Paula, on which petitioner relies.

Anderson v. *The Seirstad* (E. D. N. Y., 1926), 12 F. 2d 133, 1926 A. M. C. 564, 728, at a second stage (E. D. N. Y., 1928), 27 F. 2d 982, 1928 A. M. C. 1241,

concerned a Norwegian seaman with first U. S. papers; he was injured by negligence on board the Norwegian ship and hospitalized in New York. The Norwegian Consul appeared and stated that Anderson would have free passage to Norway and complete social relief there; however, his severe injuries might have prevented his return to New York to complete his citizenship application. The court therefore felt moved to accept jurisdiction. When the case was finally tried, Judge Campbell decided that he could not apply the Jones Act for two reasons, neither of which exists in the *Taylor* case here at bar: (1) the suit was *in rem*, and the *Plamals* case had just held that a Jones Act case may not be sued on *in rem*, overturning what had become a well-settled practice; and (2) *Resigno* v. *Jarka* had just been decided in Albany saying that the Jones Act did not apply in foreign ships. Of course Judge Campbell could not then foresee that this Court would reverse the Resigno doctrine three years later when it brought the *Uravic* case up for review.

The *Resigno* case, with the *Uravic* case, carry the matter along;

Resigno v. *Jarka* (1928), 248 N. Y. 225, 162 N. E. 13, 1928 A. M. C. 1101,

concerned a New York port longshoreman employed by Jarka, a master stevedore contractor. He was killed while working in the Lloyd steamer Hannover in 1926, during that inter-regnum when the State Compensation Law could not apply under the Jensen doctrine,

Southern Pacific v. *Jensen* (1915), 244 U. S. 205,

and the enactment of the federal Harbor Workers' Compensation Act in 1927.

To bridge that legislative gap, this Court, led by Justice Holmes, legislated that a longshoreman was a seaman while on board a ship; a tour de force, but, as he said "words are flexible."

International Stevedoring Co. v. *Haverty* (1926), 272 U. S. 50.

Thus for a space longshoremen and their widows could sue as seamen under the Jones Act, if the courts would hear them. In that situation, the New York State Court of Appeals decided that the Jones Act would not be applied by it to a longshoreman killed while working cargo on board a foreign-flag ship. The spirit of that decision was not unlike the *Sonnesen* case; indeed the Sonnesen opinion cites the *Resigno* case as authority for rejecting Sonnesen's complaint. There was no application for certiorari. But a year later another case on all fours came up, the accident having happened on board another German ship; the State courts dismissed it with a one-line reference to the *Resigno* case, but this time there was an application for certiorari which was granted; and in

Uravic v. *Jarka* (1931), 282 U. S. 234, 1931 A. M. C. 239,

this Court reversed the Resigno doctrine. Justice Holmes wrote:

> "Wise or not, it is the law, and the question is why general words should not be generally applied. What would be the alternative? Hardly that German law should be adopted. * * * It would be extraordinary to apply German law to Americans momentarily on board of a private German ship in New York."

The *Uravic* case did not merely say that American stevedores should have the Jones Act remedy when in-

jured in U. S. ports; it was much broader, and included all foreign ships and seamen, unless specifically excluded. Justice Holmes wrote:

> "But the question is not whether they were thought of for purposes of inclusion, but whether they were intentionally excluded from a description that, on its face, included them. * * * The express mention of (foreign seamen) in section 4 as to payment of wages does not help the respondent (employer), since that is a domestic matter that, unless mentioned, might be left to the parties concerned."

Thus the Jones Act, which applies to "any seaman" injured "in the course of his employment" means seamen of all kinds in all ships, unless there is an exclusionary contract or a special circumstance; it is not to be read restrictively; it does not mean merely American seamen in American ships. This Court so ruled in 1931, twenty years ago. The thought was re-stated and applied by Judge A. N. Hand in the *Kyriakos* case, described in the next pages and, it is submitted, there is no answer to it save to agree with it.

Further, Justice Holmes said, in the Uravic opinion:

> "If it should appear that by valid contract or special circumstances, seamen in a foreign ship should not be protected by the statute (the Jones Act), it will be time enough to consider the exception when it is presented. But the purport of the words is plain * * *."

In the face of that language from so high a source, it is somewhat difficult to understand the occasional re-appearance of doubts, or the opposite idea that a foreign seaman cannot have the protection of the Jones Act unless he shows a special reason for having it. The burden is the other way around; the seamen all have the benefit of the Jones Act unless some employer of a foreign seaman in a

foreign ship can show reasons why some particular seaman should not have it.

The next case arose when American nationals formed a New York corporation—The Ellis SS. Co.—and placed a ship in its name, and had the ship registered under the flag of Honduras, and chartered back to the United Fruit Company in

> *Gerradin* v. *United Fruit Co.* (E. D. N. Y., 1931), 51 F. 2d 417, 1931 A. M. C. 1425, affirmed (C. C. A. 2d, 1932) 60 F. 2d 927, 1933 A. M. C. 81, certiorari denied 287 U. S. 642,

Gerradin and all the crew were signed on and off at U. S. ports; the articles were in English, the pay in dollars; nothing distinguished the ship operation from that of the other United Fruit ships except that the flag at the stern was Honduran and not American. Gerradin was injured on the second day at sea by the negligence of a fellow-seaman, who tossed a bucket of soapy water towards the ladder which he was ascending, causing him to fall. He sued under the Jones Act; and the employer pleaded that the Jones Act did not apply on a Honduran ship at sea. The plea was flatly rejected. Judge Byers wrote:

> "In the presence of necessity the courts will look beyond the registry of a vessel in order adequately to determine a given controversy."

> *Gambera* v. *Bergoty* (the ss. Emmy), (C. C. A., 2d, 1942) 132 F. 2d 414, 1943 A. M. C. 45, rehearing at p. 47);*

concerned an Italian subject in wartime who held first papers and was signed on a Greek vessel under articles from Trenton via coastwise places to New York. He seems

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* The rehearing was not reported at 132 F. 2d 414.

to have been a temporary replacement fireman. On the second day, before passing Philadelphia, he fell down an unlighted open coal hatch. Not receiving due consideration, he sued his Greek employer under the Jones Act; the Greek employer objected that the Jones Act did not apply. Judge Coxe dismissed the objections, both under the Greek-U. S. treaty of 1902 and on discretionary grounds (S. D. N. Y.) 1940 A. M. C. 632 (not elsewhere reported). As to discretion, he wrote:

> "He has never been to Greece, he does not speak the language, the witnesses are here, and it would be a clear denial of justice if he were required to go to Greece to litigate his claim."

The Greek employer then objected that Gambera must elect between the negligence approach and the seaworthiness approach; Judge Leibell upheld that motion (S. D. N. Y.) 1940 A. M. C. 834 (not elsewhere reported), and Gambera elected for the Jones Act. The employer then moved to dismiss because the Jones Act did not apply to a foreign seaman in a foreign ship, and that motion (unreported) was granted, whereupon Gambera appealed, and the Court of Appeals reversed, saying that "the libel stated a good claim in personam which should be tried on the merits." There was a re-hearing, at which the Paula and other points were argued; Judge Learned Hand explained the Paula and affirmed the decision that the Jones Act did apply. This opinion on re-hearing is reported only at 1943 A. M. C. 47*. Certiorari was sought and denied 319 U. S. 742. Thus the foreign ship owner with his Greek flag ship finally had to deal with his injured seaman under the American Jones Act-FELA law and practice.

Kyriakos v. *Goulandris* (C. C. A. 2d, 1945), 151 F. 2d 132, 1945 A. M. C. 1041, on appeal from (S. D. N. Y., 1945), 63 F. Supp. 19, 1945 A. M. C. 439,

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* The rehearing was not reported at 132 F. 2d 414.

concerned a Greek seaman signed on a Greek ship at a U. S. port for a round voyage to England. Judge Bondy gave a Jones Act negligence decree against the registered Greek owner and the Greek partnership which managed the vessel, and also against the partners individually. On appeal, the decision was affirmed except as to the individual partners. The present case is very similar, save that Messrs. Livanos have incorporated their company in Panama instead of in Greece. In both cases the ship was operated out of U. S. ports, and the English language names were used: —there the General Steam Navigation Co. Ltd. of Greece; here the Atlantic Maritime Co. Ltd. (of Panama). The employers contended that Kyriakos had not established that they were his employers; Judge Bondy termed their evidence contradictory and evasive and confused (p. 21, col. 1, middle) but reached the conclusion that they, or some of them clearly controlled and operated the SS. Thermitor. Judge A. N. Hand agreed that at least one of them was the employer. And he wrote:

> "We are thus called upon to determine whether an alien seaman who signed on in an American port for a voyage beginning and ending in American waters can sue under the Jones Act. Although the matter is doubtful, we believe that he can".

Following Justice Holmes' argument in the *Uravic* case in 1931, he continued:

> "The right of suit given by the Jones Act was not originally so limited (to American seamen or American ships), was literally in perfectly general terms, and accordingly did not require express extension. When Congress used the word *seamen* in the Jones Act it employed a word of general application embracing men of any nation who sail the seas."

This reasoning is sound and irrefutable. The opinion is too long for inclusion here; we respectfully suggest a reading of the whole of it.

Judge Learned Hand dissented, with a half-apologetic introductory phrase: "There is much temptation to affirm this decree." But in some manner his mind went back to the days before the Seaman's Act of 1915, when it was the custom to uphold laws and treaties that allowed foreign ship operators to "crimp" their seamen, to hold them in debt-servitude for as long as three years, to withhold all their pay until the three years were over, to chase their "deserting" seamen like stray dogs. And although that was all swept away by the LaFollette Seamen's Act of 1915 his dissent revived the old formulas about internal economy and discipline under the law of the flag. For this he cited a group of cases all antedating the Jones Act except three; and of those three *Cunard* v. *Mellon* dealt with liquor in British liners under the Prohibition Act, *Grand Trunk* v. *Wright* considered an accident on a car-ferryboat across the narrow river at Detroit, and *Cain* v. *Alpha* was an ordinary common law suit for assault by an engineer upon an engine-room workman in the supposed furtherance of the employer's business. None of these cases is later in date than 1928. Of the *Mellon* case, it can be suggested that the human interest in liquor availability upon a British liner outside the three mile limit was akin to the interest in the welfare of the sick and injured seamen at sea en route to and from our ports. The case of the ferry at Detroit of course did not involve the high seas; there is no "high seas" water in the Detroit River; the confusion was only due to the fact that the Canadian Railway operated a ferry whose naked title was in an American-registry owner. The assault of Alpha's engineer on Cain was not even a Jones Act case at all, and as the vessel was American, and all the parties were American, it has no pertinence on the question of the law of the flag. The assault was in a Venezuelan port; that raised a possible question of the law of the place. But that question was not contested; Judge Swan said: *"The parties assumed,* and rightly so, that the law applicable is the gen-

eral admiralty law of the United States." (Emphasis added.)

Most interestingly there was no application for certiorari, despite Judge L. Hand's dissent.

> *Neset* v. *Christensen as Agent for Skibs A/S Oilexpress* (E. D. N. Y., 1950), 92 F. Supp. 78, 1950 A. M. C. 1832,

concerned a Norwegian one-ship company time chartered ship to an American ocean carrier which employed her in trades out of U. S. ports not going to Norway; the broker was in New York, as was the charterer, and the crew was signed on and paid off in New York. Neset, a Norwegian national living in Brooklyn, was hurt at sea, and served his summons on the Master as representative of the owner. He claimed the Jones Act right; Judge Galston upheld the service of the summons and complaint, saying that he had discretion and would exercise it in the seaman's favor. He cited *International Shoe Co.* v. *Washington*, 326 U. S. 310 (1945).

It is respectfully submitted that enough has been shown to satisfy the Court that the petitioner's brief does not disclose a new point against a disharmonious background such as to justify this Court in granting the writ. The petitioner's brief has gathered the few straws which seem to point against the prevailing wind. On examination, those straws do not persuade that the wind is unsteady or that its direction at the present day should be examined.

POINT III

Statute laws and many cases have applied U. S. law to foreign ships, shipowners and operators, passengers and seamen for a great many years, for the protection of American trade, American labor, and the general American interest. The Jones Act is only one of many examples.

In 1893, the Harter Act of Feb. 13, 1893 enacted that every bill of lading in the world, no matter how phrased or where issued, should be construed according to the policy and provisions of that statute whenever the goods arrived here. We simply do not let foreigners participate in our ocean bill of lading goods traffic in either direction—in-bound or out-bound, unless they conform their documents to our law. This was reiterated and greatly strengthened and extended by the U. S. Carriage of Goods By Sea Act of 1936 (46 U. S. Code 1300). If it is fair to tell a Panama-flag ship what shall be written into and excluded from her bill of lading issued in any foreign place, why is it not fair to tell her what shall be put into and excluded from the Articles on which the men sign to move those goods to and from our ports?

In 1851, the Limitation of Shipowners' Liability Statutes, the Fire Statute and the Valuable Cargo Statute were enacted for the benefit of all shipowners; and the Titanic owners did not hesitate to file in our admiralty court a limitation petition for British losses on the high seas wherein the ship never entered an American port even once. Their petition was accepted. The Titanic (1913), 233 U. S. 718, is one of countless examples. The foreign shipowners freely seek and obtain the benefit of our laws; why should they not also take the burdens, which rest on the American shipowner with whom they compete?

In 1936, the Sirovich amendments to the Limitation laws and in 1920 the federal High Seas Death Act gave advan-

tages to passengers who have injury and death claims against water carriers. When the Canadian cruise liner, Noronic burned at her pier at Toronto with much loss of life and many personal injuries, the passengers came to Cleveland to sue the Canadian company in our courts under our laws.

> *The Noronic* (N. D. Ohio, 1950), 93 F. Supp. 549, 1950 A. M. C. 1499; further proceedings at 1950 A. M. C. 1840 (not elsewhere reported).

If fair for the passenger, why not for the seaman who is in the ship with him?

In 1890, the Stand-By Act (now 33 U. S. Code 367) declared that after a collision it is the duty to stand-by the other vessel; and that running away after collision raises a presumption of fault. This is applied to foreign ships at sea. A Greek ship that failed to stand-by after a collision at sea off the Jersey coast was held solely to blame for several reasons, one of which was the presumption of our law.

> *Theothilatus* v. *Martin* (C. C. A. 4th, 1942), 127 F. 2d 1016, 1942 A. M. C. 764.

In 1882 the Passenger Act (now 46 U. S. Code 151) provided that foreign ships arriving here with passengers and not complying with our legal standards as to accommodations and safety commit a misdemeanor; it matters not that the accommodations were lawful at the place where the passengers came aboard, or by the law of the ship's flag. This was re-expressed in broader terms in the Safety At Sea Convention of 1929, ratified in 1936 and conveniently found in the Navigation Laws of the United States, 1940 ed. pages 89-113. In ratifying that Convention, the Senate carefully appended reservations* preserving against implied attack or repeal the right of seamen to leave a ship and avoid compulsion to proceed to sea

* 50 U. S. Stat. L. 1306.

against the man's will; and also the doctrine announced by this Court in *Strathearn* v. *Dillon*, 252 U. S. 348. Thus the policy announced by this Court in favor of alien seamen in alien ships has been imbedded by the Senate in the International Convention on Safety at Sea. The interplay between the Court, the Congress and the Executive to apply American justice and policy to foreign ships and seamen who trade in and out of our ports in competition with Americans who are subject to our laws and obey them is clearly demonstrated.

The Navigation Laws contain so many examples of rules applied to foreign ships and their business, cargoes, and personnel, that it is impossible to list them all. Between 1875 and 1915, foreign interests managed to obtain some decisions that the "law of the flag" followed the foreign ship and gave her some privileges superior to our laws. In those days our American-flag shipping shrank in the face of the foreign competition which had low standards sheltered by the "law of the flag". Step by step American standards were imposed; as to passengers in 1882; as to inanimate goods—bales and boxes, in 1893; as to seamen, flesh and blood, in the Seamen's Act of 1915 and the Jones Act of 1920. The myth of foreign superiority sank with the Titanic. The fact of American excellence began to emerge in World War I and was firmly established by World War II. Our ships and our law stand comparison with the best; we do not fear that others will apply higher standards to our shipping and the problem is how to extend our standards to those who compete directly with us in our own trades. If our laws are good for passengers, for boxes, bales and bills of lading, for general averages and salvages, for every other form of human and property activity at sea, there can be no reason why they should not be equally good for the one remaining element, namely the men who man the ships that trade to and from our ports, who are hired here, paid off here, hospitalized here, and who convalesce here after illness and injury, and who—

like Taylor in the case at bar, die here of the illnesses contracted in the sea service.

The wages laws are good illustrations. Selecting chiefly Greek cases, we cite:

> *Stavridis* v. *Compania Panamena Europe de Nav. Ltda.* (S. D. N. Y.), 90 F. Supp. 187, 1951 A. M. C. 345; commissioner's report, 1951 A. M. C. 347, affirmed 1951 A. M. C. 354 (not yet elsewhere reported).

Stavridis, a Greek, signed on a Panama-flag ship for a round voyage from the United States, not to exceed a year, wages payable in Dollars. Arrived in Europe, the shipowner announced in Genoa that the ship would stay in European trades and thereafter pay wages in Pounds. Stavridis insisted on being signed off, but was inadequately paid, and left stranded at Genoa. Getting another job he returned to New York and succeeded in getting jurisdiction of the employer-shipowner; the federal court thereupon gave him his rights under his Articles, signed in a U. S. port, according to American standards of justice.

> *Kikilis* v. *Niarchos* (New York City Court), 1949 A. M. C. 709 (not elsewhere reported);

a Greek employer, who signed on a Greek seaman at New Orleans, paid him an advance of $100 and attempted to deduct this on paying off at New York; the court properly held that the advance was illegal, and could not be deducted from the wages subsequently earned. This strikes against the "crimping" system of recruiting seamen.

> *Dalmas* v. *Stathatos* (S. D. N. Y.), 84 F. Supp. 828, 1949 A. M. C. 770.

One Greek ship salvaged another by a long and difficult tow in the Pacific; the owners made a London arbitration

agreement; but the crew of the salvaging vessel sued for salvage in New York; the court upheld their right to do so.

Korthinos v. *Niarchos* (C. A., 4th, 1949), 175 F. 2d 730, 1949 A. M. C. 1135.

A Greek crew signed Articles in a U. S. port; there were serious disputes at the end of the voyage, and the crew staged a sit-in strike. The federal court took jurisdiction of all aspects of the dispute, including wage disputes hanging over from earlier voyages. The Court of Appeals, in an opinion by Judge Parker, affirmed. This Court denied certiorari, 358 U. S. 894, rehearing denied, 338 U. S. 939.

Kyparrisi v. *S. S. Joshua* (S. D. Ga., 1949), 1949 A. M. C. 1904 (not elsewhere reported).

A Panama-flag ship signed on a crew at Los Angeles and paid them off after three months at Savannah; there were wage disputes, which the federal admiralty court examined; it was found that everything due had been placed in the registry of the court, or paid to the men.

Venides v. *United Greek Shipowners* (C. A. 2d 1948), 168 F. 2d 681, 1948 A. M. C. 1437.

During the German occupation of Greece, the Greek shipowners agreed with the London Greek government in exile to deduct portions of Greek seamen's wages and put them in a London fund for the eventual relief of persons connected with shipping in Greece. The federal court held that this "allotment" system was illegal under the American statutes, because not for the direct benefit of the seaman's wife, children, etc. Hence the Greek ship, paying off in New York could not deduct those London fund sums; and the men furthermore were entitled to two days' pay for every day of delay in payment, according to our statutes.

Many more could be cited, and not all Greek or Panamanian.

POINT IV

Miscellaneous and Conclusion

We have shown that the petitioner's cases do not support the argument that an unharmonious situation exists requiring this court's attention; and that the current of Jones Act cases is strongly in the direction of the decision of the Court of Appeals in the case at bar; and that there has for a great many years been a general policy of applying our laws to alien ships, alien contracts, alien cargoes, alien passengers, as well as alien seamen who participate in our trade.

There remain only a few minor points mentioned in the petitioner's brief. It is said, for example, that Judge Learned Hand has become uncertain on the point, whereas he was very certain of it in the *Stewart* case, which he decided in 1924. That may be so; but his recent uncertainty has not been very positive. He decided the *Gambera* case in 1942, above cited, in the foreign seamen's favor, against the foreign ship. His dissent in the *Kyriakos* case is not convincing and opens with an apologetic note.

Judge Swan is also mentioned; and it seems that he has expressed himself more consistently than other judges against giving the Jones Act remedy to aliens. But he is in the steady minority.

The petitioner suggests that Taylor and his employer were fellows in nationality. Taylor seems to have been born in Panama; The Livanos partners went there to incorporate their business. These two—the man and the corporation—met in Norfolk, Va., and signed their contract—the Ship's Articles—there, for a round voyage out and back to the United States, wages payable in dollars, everything in English. That is indeed a thin veil of fellow-nationality for two Spanish-speaking, peso currency persons of Panama. It is easily seen through.

The petitioner cites some very old cases which are, we submit, irrelevant; they long ante-date the Jones and Seamen's Acts:

The Scotland (1881), 105 U. S. 24 was a collision between a British and an American vessel near Sandy Hook. Both sank, the Scotland forming the shoal which has since been guarded by a U. S. light-ship. The British owner was allowed to limit liability to nothing under our statutes, which was much more favorable than the British System limit of £8 per ton. That strongly argues that the beneficent burdens of our law should be accepted along with their beneficent advantages.

U. S. v. Rodgers (1893), 150 U. S. 249 concerned a crime on the Detroit River. It did not deal with civil liabilities or employer-employee relations.

Thompson Towing & Wrecking Assn. v. *McGregor* (C. C. A. 6th, 1913), 207 Fed. 209 also ante-dated the Jones Act. It considered the Michigan death act as available on the Great Lakes prior to the enactment of the federal High Seas Death Act. It adds nothing here.

Rainey, Admx. v. *New York & Pacific Steamship Co. Limited* (C. C. A. 9th, 1914), 216 Fed. 449 which petitioner cites does not help him. Rainey was killed, and in 1914 there was no federal statute for deaths on the high seas (1920). Nor was there a Jones Act (1920) or even a Seamen's Act (1915). The British S/S *Cacique* was on a charter to an American ship operating company, W. R. Grace & Co., for a voyage from Seattle to Peru and back to Seattle—a non-British trade. Rainey was a U. S. citizen who held U. S. and British chief engineer licenses. He signed on at the W. R. Grace office in Seattle. He died after an engine-room accident at a Peruvian port. The court found that the ship was unseaworthy and said (p. 454, top) "*So if*, instead of the injuries to Rainey having

caused his death, *he had survived* and had brought a libel for damages for injuries * * * *he could doubtless have recovered.* But Rainey died and neither his widow nor any one else can maintain a suit", etc. It was the harsh old rule that death is the composer of legal strife; that rule was swept away by the federal Death Act of 1920.

The petitioner cites *the Belgenland* (1885), 114 U. S. 335 but does not analyze it. That was a collision at sea between a Belgian ship and a Norwegian ship, the Luna, which sank. The Belgenland did not sink and eventually reached Philadelphia, where the Luna's owner libelled her. The proctor for the British ship protested. But BRADLEY, J. wrote (p. 364) that our admiralty court will take jurisdiction "where the voyage is ended, or the seamen have been dismissed, or treated with great cruelty". That lists three different situations, of which two are present in the case at bar: (1) The voyage of the *Atlantic Air* ended in the U. S. not by such an accident as collision, but because Atlantic Maritime and Livanos planned it that way and so drew the Articles which formed Taylor's contract; and (2) the seamen were dismissed, being paid off in a U. S. port according to Articles. It can be reasonably argued that the third condition was also present, namely (3) great cruelty, namely keeping a tuberculous man on board and at work from March to November until his sickness was past cure.

Further on the same page (p. 364) Justice BRADLEY says that "the case of foreign seamen is undoubtedly a special one, where they sue for wages * * *". As to that it may be remarked (1) that Justice Bradley's position about wages was reversed by Congress in the Seamen's Act of 1915, sections 4, 11 and 16 (foreign seamen sue freely for wages since 1915); and (2) the case at bar is not a wage case, but a case of illness, and negligent care thereof.

At the bottom of page 365, BRADLEY, J. further said:

"The existence of jurisdiction in all such cases is beyond dispute; the only question will be, whether it is expedient to exercise it." And (at p. 369): "As to the law which should be applied in cases between *parties*, or ships, of different nationalities arising on the high seas not within the jurisdiction of any nation, no doubt it is the general maritime law as understood and administered in the courts of the" forum. The Jones Act is part of that law.

The petition cites a U. S.-Canadian railroad case:

> *New York Central R. R.* v. *Chisholm* (1925), 268 U. S. 29.

Chisholm, a railway man, crossed the border into Canada with his train and was hurt in Canada; he sued his U. S. employer under the FELA. But in working in Canada he was working under Canadian conditions; the FELA is definitely *not* a workmen's compensation act which could operate extra-territorially (p. 31, middle).

There are a host of distinctions between that case and this. A train does not "go to sea" between the U. S. and Canadian boundaries. You never meet a Panamanian railway carrier and its employees on an American or Canadian railway line. And although we apply our Carriage of Goods Act to goods coming by sea from England, Panama and India, we do *not* apply our Pomerene Federal Bill of Lading Act, or our Carmack "initial carrier" Amendment to goods coming overland from Canada and Mexico.

> *The Pomerene Act*, now 49 U. S. Code 81;
> *Strachman* v. *Palmer* (D. Mass., 1949), 82 F. Supp. 161; modified on another point (C. A. 1st, 1949), 177 F. 2d 427;
> *Sklaroff* v. *Penn. R. R.* (E. D. Pa., 1950), 90 F. Supp. 961;
> *Columbia L. R.* Vol. 49, page 1009.

The *Chisholm* case is not at all in point.

This is not a case of power but of discretion. The federal government in its Courts and in its Congress certainly has the power to take jurisdiction over events in foreign ships at sea when the ships come to our ports, and to decide them according to the law and the public policy prevailing in the U. S. A. And it is submitted that the Court of Appeals exercised its discretion correctly.

In the course of the *Uravic* argument, counsel suggested that Congress did not mean to apply the Jones Act to foreign contracts when the parties to the contract are in the U. S. ports "only transiently" (282 U. S. 234, at 235). That conceded that it should apply when the contract is made in the U. S. and the ship is in foreign places "only transiently".

When the contract is made in our country, when the service begins here and ends here, and all its incidents are the same as when the American flag flies at the vessel's stern, discretion is correctly exercised to handle the seaman's case under American law.

The Jones Act and the Seamen's Act have long since ceased to be innovations. After thirty and thirty-five years respectively, they have become settled factors in our law. Few now active even remember the way things were before 1915. Much of our legislation of 1915 has since been expressed in multilateral conventions of the International Labor Office set up by the League of Nations and continued by the United Nations; it has spread from the more or less unique American first example into a world-wide movement. The position of the seaman is still unsatisfactory when his employer operates the ship in a trade which never touches the home port where the "law of the flag" is a living fact. In such situations he needs access to the law and the remedies of the ports where the ship actually trades. Most especially is he entitled to this when the

managers of the ship themselves are not actively found in the country which furnishes the flag and its law. Most strongly is the seaman entitled to meet his employer face to face in the courts and under the laws of the country where his employer choses to set up his principal office and in whose ports the employer choses to sign his crews on and pay them off. Taylor, a seaman signed on at Norfolk, Va. for a round voyage ending in a U. S. port, under American conditions in all other respects is clearly entitled to meet his employer in a U. S. court under the Jones Act conditions to settle the issue of liability in respect of his illness, which began while he was on the ship in its service and was aggravated by the lack of care there. The fact that he died of that illness while the employer resisted the legal claim merely points the moral.

The ruling as to which certiorari is sought presents nothing new. The petition should be denied.

A. Bradley Rankin, Administrator of the Estate of Lindeville Taylor, deceased,

By Silas Blake Axtell,
Arnold W. Knauth,
Counsel for Respondent.

New York, March 29, 1951.